IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.M.JOSEPH

TUESDAY, THE 13TH NOVEMBER 2007 / 22ND KARTHIKA 1929

ST.Rev..No. 318 of 2004

TA.418/2003 of COMMR.KERALA AGR.IT & STAT,TVM.
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REVISION PETITIONERAPPELLANT

S.SUNIL KUMAR,
PROPRIETOR,
M/S.PUNARTHAM CHEMICALS,
VARKALA, THIRUVANANTHAPURAM DISTRICT.

BY ADV. SRI.C.K.THANU PILLAI
SRI.M.KUMARESAN
SRI.S.S.HUSSAIN
SMT.S.SHAINA
SRI.T.K.SHAIJ RAJ
SRI.R.B.DEVARAJ
SRI.ASHA SHAIJ RAJ

RESPONDENT/RESPONDENT:

THE STATE OF KERALA.

BY SR. GOVERNMENT PLEADER (SHRI MUHAMMED RAFIQ)

THIS SALES TAX REVISION HAVING BEEN FINALLY HEARD ON 24.10.2007, THE COURT ON 13.11.2007 PASSED THE FOLLOWING:

H. L. DATTU, C.J. & K. M. JOSEPH, J.

S.T.REV. NO. 318 OF 2004

Dated this the 13th November, 2007

ORDER

K.M. Joseph, J.

This Tax Revision Case is directed against Annexure IX Order of the Tribunal. Petitioner is a registered dealer under the KGST Act and CST Act, in Sodium Silicate and inedible oil. The matter arises out of Annexure VI assessment order. Petitioner was issued with the pre-assessment notice proposing to make certain additions. The grounds on which the additions were proposed were under-valuation in inter-State purchases, gross profit was low, freight charges being not accounted and purchases as shown in check post declarations being not accounted. Accordingly, 1/3rd addition towards under-valuation, three times of the value towards check post declarations, ten per cent towards freight and five per cent for gross profit were made. According to petitioner, there was no under-valuation. According to petitioner, the alleged purchases

shown in the check declarations were not made by the petitioner and freight was met by the suppliers and the profit was correctly accounted. Annexure VII is the order of the first appellate authority whereunder the assessment order was upheld. By Annexure IX, the Tribunal deleted the addition of two times towards suppression detected on verification of the check post declarations to cover up the suppression for the whole year. Thus the addition on account of the suppression on the basis of check post declarations was directed to be limited to the actual volume of suppression detected on verification of the check post declarations. All the other additions made by the assessing authority were sustained.

2. We heard Shri C.K. Thanu Pillai, learned counsel appearing for the petitioner and also the learned Government Pleader. Shri C.K. Thanu Pillai would contend that there is no basis for making any addition on the basis of the allegation of under-valuation. He would submit that there was actually no under-valuation. He relied on the decision of this Court in C.O. Devassy v. State of Kerala (81) STC 3). He would contend that

the finding of the assessing authority that there was under-valuation, is without any basis. He would submit that Annexure V would show that the supplier has fortified the petitioner in his case that what was being supplied to the petitioner was only "C" Grade Sodium Silicate and the highest rate is Rs.3/= per KG only. Learned counsel for petitioner relied on Section 29B of the KGST Act also. He submits further that the finding of under-valuation and the additions made on the said basis are not to be sustained.

3. The assessing authority has referred to the transaction between the very same dealer from whom the petitioner has purchased Sodium Silicate with the transactions he entered into with another dealer and found that there was a huge difference in the sales price by the seller to the customers of the very same place i.e. purchase value conceded by the petitioner is very low, and that conceded by the other dealer is higher than 33.33 per cent conceded by him. It is found that there is no reason for such variation in price for the same commodity during the same

period from the same seller at Tamil Nadu. It is further found that the above aspect of under-valuation is further confirmed on verification of purchase bills and all other details. It is also noted that the pattern of under-valuation is practised by the petitioner during the year in the case of inedible oil as well. In fact, apparently, the petitioner had produced Annexure V letter. Annexure V letter is also seen considered by the assessing authority. It is found that the original of the letter was not received directly. It is of course stated that the quality of Sodium Silicate makes no difference in the context. It is found that it is revealed from the Accounts, Invoices and check post declarations available in the records that the very same Kamalam Chemicals which has given Annexure V letter was effecting sale of Sodium Silicate from the very beginning in 1994 - 1995 to 2001 - 2002 for a cost of Rs.3/= per KG. The Officer found that it is unbelievable to accept that the price of the commodity during these years was at a stalemate without any price increase. It is found that the declarations filed at the Sales

Tax Check Post along with the copies of the Invoices would reveal that the vehicles are not owned by the consignor. It is also found by the assessing authority that the petitioner has not even disclosed the mode of payment to the sellers, nor has he produced any Bank Pass Book to prove the real transactions. One among the terms noted in the Invoices of Kamalam Chemicals is found to be that acceptance of payment would be made only by Demand Draft. It is found that the particulars of Demand Draft transactions were not disclosed by the assessee. It is found thereafter as follows:

> *"The above aspects speak well of the truth that the assessee was paying more than the ostensible consideration shown in the invoices and that he was receiving the sale value more than that shown in his sale bills. The difference between the price paid by the assessee and other dealers of the locality for the same commodity, to the same seller at Tamil Nadu during the same period, the prices charged for sales by other dealers in the State, the absence of freight component in the direct expenditure that forms the*

purchase cost of the goods, the presence of freight charges in the case of the other similar dealers etc. have been taken into account by me in this case."

4. It is true that in the decision in C.O. Devassy v. State of Kerala ((81) STC 3), this Court has stated as follows:

"(iii) that a duty was cast on the Revenue to prove that the assessees factually collected more than the ostensible consideration shown in the accounts. Such a finding, essential to sustain the assessments under Section 19B of the Act, was not recorded in any of the orders of the authorities below."

But, in view of the findings entered, we find it difficult to accept the case of the petitioner.

5. As far as the point relating to check post declarations forming the basis of addition of twice the amount discovered on the basis of check post declarations, we note that the Tribunal

has, in fact, limited the addition to the actual suppression. Even though petitioner pointed out that this is a case where requirements of law under Section 30B are not satisfied, we do not find, in the facts of this case, that the petitioner can be said to have shown that the addition is to be interfered with. The Tribunal has noted that the transactions are with the regular customers of the petitioner. The assessing authority has given elaborate reasons for making additions on the basis of check post declarations. We do not think that the petitioner is entitled to any relief on this score either. We find no merit in the questions of law raised by the petitioner and answer them against the petitioner and dismiss the S.T. Rev. case.

H. L. DATTU
(CHIEF JUSTICE)

K. M. JOSEPH
(JUDGE)

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